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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 THE CITY OF PROVIDENCE, et. al.,

4 Plaintiffs,

5 v.

11 CV 7132 (CM)

6 AEROPOSTALE, INC., et al.,

7 Defendants.

8 -----x
9 New York, N.Y.
May 9, 2014
10:00 a.m.

10 Before:

11 HON. COLLEEN McMAHON

12 District Judge

13 APPEARANCES

14 LABATON & SUCHAROW LLP
15 Attorneys for Plaintiffs
16 BY: JONATHAN GARDNER
17 NICOLE M. ZEISS
CAROL CECILIA VILLEGAS
LISA M. LAMB

18 WEIL, GOTSHAL & MANGES LLP
19 Attorneys for Defendants
20 BY: JOSEPH S. ALLERHAND
21 CAROLINE ZALKA
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(Case called)

THE COURT: This matter is on for a hearing to approve the settlement of the class action that has been pending here now since the middle of 2011.

I have reviewed all of your papers, including reply papers and the couple of objections that were filed, so I will hear anything that you want to say to supplement that which you have submitted in writing.

Counsel.

MR. GARDNER: Good morning, your Honor.

I will be brief.

Just as a general matter, we are happy to have brought this case to resolution. It settles a case that has been pending for over two and a half years.

I think the most important thing to focus on is the reaction of the class. Despite sending out over 45,000 notices, the response that we have received has been overwhelming positive. We have only two requests for exclusion, representing about 40 shares of stock and we have only two objectors. Neither of the objectors nor those who seek exclusion are institutional investors or government entities of any kind. They are individuals with very limited holdings in the stock, so in the context of class action litigation settlements, I would submit that that is an extraordinary positive response from the class. Despite a

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1 while to run, we did check with the claims administrator as of
2 last night and there were almost 2,000 claims already
3 submitted.

4 THE COURT: Excellent.

5 MR. GARDNER: Generally, most of the claims come in
6 right at the very end, they are by institutional investors and
7 they come in, in bulk by brokers, etc., but having already
8 received nearly 2,000 claims with only two objectors and two
9 opt-outs is fairly extraordinary and very positive.

10 Other than that, I am happy to respond to any
11 questions you have.

12 THE COURT: Your papers were excellent.

13 MR. GARDNER: Thank you, your Honor.

14 THE COURT: You will recognize portions of them in the
15 opinion.

16 Anything that you all want to say for the defendants?

17 MS. ZALKA: No, nothing from defendants.

18 THE COURT: I know what it is like to be on the back
19 table.

20 I am going to approve the settlement. I have an
21 opinion in draft which we will release later today.

22 You are right, it is the reaction of the class and the
23 tenuousness of the objections -- two of the objections,
24 obviously, were to the amount of your attorneys' fees.
25 Especially in light of the amount of the discovery, I thought

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1 that in your reply brief you did an excellent job of tweaking
2 out the mathematical flaw in the calculation of what the
3 recovery was likely to be. That has been incorporated into the
4 opinion.

5 I just want to say on the record, this is the rare
6 case where I have no problem with the 33 percent fee. And it
7 is a rare case where I have no problem with a 33 percent fee,
8 but that is because this case has actually been litigated.
9 This is not a case where there has been -- and I don't mean to
10 denigrate the work done on other cases, but this was not a case
11 where there was a relatively quick settlement followed by
12 confirmatory discovery. This was a case where you all were
13 way, way down the pike in the litigation before Judge Weinstein
14 came in and knocked your heads together and got you to settle
15 it.

16 And aside from the fact that I have never seen a
17 settlement from Judge Weinstein that I couldn't approve because
18 I know him and I know his reputation and I how hard he works on
19 these cases.

20 There is merit and virtue in compensating a
21 plaintiffs' counsel who has conducted extensive merits
22 discovery in the case and who after having done extensive
23 merits discovery has reached the conclusion that this is the
24 number at which to settle. I am sure you would like to settle
25 for a bigger number. I am sure Aeropostale would have liked to

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1 settle for a smaller number. But in this context of a fully
2 litigated case and a very meaningful mediation, I am happy to
3 approve the settlement.

4 And now I mean no disrespect to the City of
5 Providence. It is a great city. And I am sure it has been a
6 wonderful lead plaintiff but I have been very troubled for a
7 long time by the practice of giving tips to the lead plaintiff,
8 and I have said that a couple of times and this is the case
9 where I am drawing the line. The City of Providence did
10 absolutely nothing more in this case than a plaintiff has to do
11 in every case without compensation -- it responded to
12 legitimate discovery requests; it consulted with its lawyers;
13 it reviewed papers drafted by one of the finest law firms in
14 the city of New York, I am sure its comments were valuable --
15 the city solicitor of the City of Providence is probably one of
16 the finest lawyers in America.

17 But when you bring a lawsuit as a member of a class, I
18 don't quite understand this practice that has grown up of
19 offering what is, in essence, a tip to the lead plaintiff. And
20 so this ends up being the case where I draw the line. So there
21 will not be extra compensation above and beyond the
22 participation in the settlement for the City of Providence.

23 But other than that, I am approving all of the aspects
24 of the settlement.

25 MR. GARDNER: Can I just be heard? I am probably not

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1 going to persuade you otherwise and probably not trying to, I
2 would like to just give you the context of the request just
3 because I think it might be helpful.

4 THE COURT: It is probably a stupid case for me to
5 draw the line because I am sure you got much more help from the
6 City of Providence than class plaintiffs get from John Smith on
7 behalf of the class.

8 MR. GARDNER: I would say that is absolutely true in
9 this case, but the origin of the request is actually in the
10 statute, in the PSLRA itself, incentivizing institutional
11 investors that have a lot of different things on their plate,
12 to step up and be a lead plaintiff. It is not giving them
13 anything above what the class is getting. What it is doing is
14 reimbursing them for time spent that they would be doing other
15 city business.

16 In this case, the City did do more than typical. We
17 went up there at least two or three times to collect their
18 documents. We invaded their ESI. We shut down some computers
19 so we could recover and make sure our production was fulsome.
20 They did prepare and sit for a deposition. So they were very
21 involved in the litigation. It is really reimbursing their
22 lost wages that they would have been spending doing other City
23 business.

24 THE COURT: The whole point is that they didn't do
25 lose any wages. They paid their employees and on that

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1 particular day, they asked their employees to recover
2 documents.

3 MR. GARDNER: That is true.

4 THE COURT: Nobody missed a day of work.

5 MR. GARDNER: The request from a monetary perspective
6 is relatively modest.

7 THE COURT: That's why I called it a tip, it is a tip.
8 I will think about it, OK?

9 MR. GARDNER: Thank you, your Honor.

10 THE COURT: I appreciate that the statute authorizes
11 it. Like many things about the PSLRA, I don't think it is the
12 smart thing to do.

13 MR. GARDNER: I would agree with --

14 THE COURT: There are a whole lot of things about the
15 PSLRA I don't think are particularly smart, like not letting
16 the judge run the case, but other than that -- all right, I
17 will think about it. It does trouble me. It really does
18 trouble me.

19 This will come out this afternoon.

20 Thank you all for the good, hard work that you put
21 into this case.

22 MR. GARDNER: Thank you, your Honor. It is very much
23 appreciated.

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